

The Appeals Board must first consider whether it has jurisdiction to consider this appeal. There is no dispute regarding whether claimant suffered accidental injury, or whether claimant's accidental injury arose out of and in the course of her employment. The only dispute deals with what date of accident would be appropriate and which insurance company should pay benefits from this preliminary hearing.

Appeals from preliminary hearings are controlled by K.S.A. 1997 Supp. 44-551, which allows appeals from preliminary hearing awards under K.S.A. 1997 Supp. 44-534a only if it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at preliminary hearing. K.S.A. 1997 Supp. 44-534a lists specific disputed issues, which are considered jurisdictional, including whether claimant suffered an accidental injury, whether the accidental injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply. These issues are considered jurisdictional and subject to review by the Board from preliminary hearing orders.

The issues raised by respondent and its insurance carrier do not fall within the jurisdictional issues listed in K.S.A. 1997 Supp. 44-534a, and the decision by the Administrative Law Judge to order medical treatment did not exceed the Administrative Law Judge's jurisdiction under K.S.A. 1997 Supp. 44-551.

When the only dispute on appeal from a preliminary hearing order deals with which insurance company will pay for a particular treatment, jurisdiction will not be taken from an appeal of that preliminary hearing decision. See Burton v. Electrical Corporation, Docket Nos. 236,797, 236,798, 236,799, and 236,800 (February 1999); Ireland v. Ireland Court Reporting, Dockets Nos. 176,441 and 234,974 (February 1999).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the order of Administrative Law Judge Robert H. Foerschler dated January 28, 1999, remains in full force and effect, and the appeal of the respondent and its insurance carrier, Commercial Union Insurance Companies, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS
Kip A. Kubin, Overland Park, KS
David J. Bogdan, Kansas City, MO
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director